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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,627	08/05/2003	Steven C. Robertson	ROBERT.P00D1	7205

7590
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08/27/2008

EXAMINER

ROSEN, NICHOLAS D

ART UNIT	PAPER NUMBER
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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FROM DIRECTOR'S OFFICE

AUG 26 2008

TECHNOLOGY CENTER 3600

In re Application of:

Steven C. Robertson
Application No.: 10/634,627
Filed: August 5, 2003
Attorney Docket No.: ROBERT.P00D1

For: SYSTEM AND METHOD FOR
PROVIDING ELECTRONIC
MULTI-MERCHANT GIFT REGISTRY
SERVICES OVER A DISTRIBUTED
NETWORK

:
:
: **DECISION ON**
: **PETITION TO INVOKE**
: **SUPERVISORY AUTHORITY**
:
: **UNDER**
:
: **37 C.F.R. 1.181**
:
:

This decision is in response to Appellant's "Request for Reconsideration of Petition under 37 CFR 1.181" filed on April 24, 2008. Such "Request" requests reconsideration of the original petition under 37 CFR 1.181 filed August 16, 2007 in order to "obtain from the Director his specific ruling as to whether the use of 'official notice' in this case is in compliance with the rules of the MPEP or not" and to "apply such remedy as the Director thinks appropriate in this situation where an Examiner has committed procedural impropriety in the examination".

The petition is **DENIED**.

The petition is directed to three main issues:

1) That the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known per MPEP 2144.03(A).

2) That the Examiner has provided no combination of references which can be addressed by Appellant for proper argument against the reconstruction when requested by Applicant to do so.

3) That the Examiner has confused the date to which any officially noticed facts must be taken.

Regarding issue 1

A review of the final Office action mailed January 31, 2007, reveals that the Examiner has repeated several officially noticed items first made in the Office action mailed July 20, 2006. The repeated items are as follows: "running applications on computers is well known" (at pages 2, 11 and 12); "to access online web sites from remote sites [is well known]" (at pages 3, 11 and 12); "to transmit advertising data to the site where the advertising will be posted [is well known]" (at page 7); "for advertising data to comprise sale event data [is well known]" (at page 7); and "to send out notifications (e.g., e-mails) containing advertising [is well known]" (at page 8).

A review of the response filed December 26, 2006 (Appellant's first response to the Examiner's holding of the officially noticed items) reveals that Appellant traversed the reference to Cohen alone, but failed to adequately traverse the Examiner's hypothetical combinations including Cohen and various officially noticed items. Additionally, Applicant demanded that the Examiner produce authority for his holdings of official notice in only one instance (at page 12). In response to this demand, the Examiner produced "InfoGear" as the authority for his statement and modified the statement of the rejection of claim 30 to include "InfoGear". The Examiner indicated in the final Office action that "[t]he common knowledge or well-known in the art statements in the previous office action are taken to be admitted prior art, because Applicant did not traverse Examiner's taking of official notice, except with regard to claim 30". The actions by the Examiner are procedurally consistent with MPEP 2144.03.

Specifically, however, the petition has only identified two of the repeated items which are alleged to lack instant and unquestionable demonstration as being well-known. These are: "running applications on computers is well known", and "to access online web sites [is well known]". Nothing in the petition specifically points out the supposed procedural errors in the Examiner's action. Moreover, there is nothing in the petition which amounts to a statement as to why the noticed facts are not considered to be common knowledge or well-known in the art. In *re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943). Accordingly, the petition provides no persuasive

showing that the actions by the Examiner are procedurally inconsistent with MPEP 2144.03.

Regarding issue 2

A review of the final Office action reveals that the Examiner has, upon adequate traversal of any officially noticed facts, provided combinations of references which can be addressed by Applicant. Specifically, the Examiner has made "InfoGear" of-record in the rejection of claim 30 (at page 4). No other officially noticed items were adequately traversed, and accordingly, the rejections based upon previously officially noticed items were additionally taken to be based upon admitted prior art. The actions by the Examiner are procedurally consistent with MPEP 2144.03(C).

Regarding issue 3

A review of the record does not reveal that the Examiner has confused the date to which any officially noticed facts must be taken. It appears that this concern first surfaced in Applicant's response filed December 26, 2006. Here, Applicant states that "Applicant must assume the Examiner means, 'was well known' at the time of the invention" (at page 12). The Examiner references Applicant's assumption (in the final Office action) by stating that "running applications is very well known, and was even in 1999" (at page 15). The Examiner's reference to "1999" is considered to be a clear acknowledgement of Applicant's earliest priority date of May 7, 1999--thereby affirming Applicant's assumption. Moreover, the record provides constructive evidence that the Examiner recognized May 7, 1999 as the date to which any officially noticed facts must be taken inasmuch as the Examiner has relied upon "InfoGear" (having a publication date of March 10, 1998) as his authority for having taken official notice in his statement of the rejection of claim 30.

Summary: The Petition is DENIED

The application remains before the Board of Patent Appeals and Interferences for consideration of the Appeal.

Any questions concerning this decision should be directed to
Jeffrey A. Smith at (571) 272-6763.



Wynn Coggins, Director
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jas: 06/13/08

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